

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

EX PARTE SUBMISSION
IN SCHOOLS AND LIBRARIES PROCEEDING

In August 2001, E-Rate Central, the E-rate coordinator for the New York State Education Department, submitted an appeal to the Commission specifically requesting the review of five decisions of the Schools and Libraries Division ("SLD") that reduced or denied funding requests for cellular service on the basis of reportedly ineligible use. More broadly, we asked the Commission to review and clarify the E-rate eligibility of cellular telephone and other mobile services in light of the realities of instructional usage within schools and of the Commission's own policy of technological neutrality for wireless services.

Because these broader issues are now under consideration in the Commission's Notice of Proposed Rule Making and Order, Docket No. 02-6, a copy of this appeal is being submitted herewith for consideration as a part of this proceeding.

Respectfully submitted,

By: _____
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Dated: June 5, 2002

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)	
)	
Request for Review of Decisions)	Docket Nos. 97-21 and 96-45
of the Universal Service Administrator)	
)	

In this appeal, E-Rate Central, the E-rate coordinator for the New York State Education Department, asks the Commission to review five decisions of the Schools and Libraries Division (“SLD”) that reduced or denied funding requests for cellular service on the basis of reportedly ineligible use. More broadly, we ask the Commission to review and clarify the E-rate eligibility of cellular telephone and other mobile services in light of the realities of instructional usage within schools and of the Commission’s own policy of technological neutrality for wireless services.

Background:

Since the beginning of the E-rate program, the application for discounts on cellular telephone and other mobile services has been a hit or miss process for many schools and libraries. Program rules indicate that mobile services are eligible if used for instructional or educational purposes, but these terms are not well defined. Instead, applicants have been led to rely on SLD-provided, but limited and oft-changing, lists of user job titles (e.g., bus drivers) that would not be eligible. The most recent and complete list of ineligible titles appears in the SLD’s Eligible Services Matrix dated December 29, 2000, that was released during the winter school holiday period just prior to last year’s Form 471 application deadline. Even this list is clouded by a statement that these persons “would not be eligible unless those individuals also provide instruction, in which case they would.” The criteria to “provide instruction” is presumed to be interpreted broadly as indicated by an earlier sentence that indicates that eligible use would include the support of “curriculum or instruction management.” This language, in our view, properly reflects the reality of school management whereby broad educational, supervisory, and support responsibilities are assigned to, or assumed by, many individual staff members independent of job title.

Uncertainty as to the eligibility of various support personnel creates a significant filing dilemma for applicants. If, to be safe, they do not request discounts for usage by certain eligible personnel, they forego funding to which they are otherwise entitled. If, on the other hand, they request discounts on all personnel that could reasonably be deemed to support “curriculum or instruction management,” they risk being denied funding entirely .

From the SLD’s vantage point, the review process is also difficult. To simplify the process, however, it appears that SLD reviewers have been given a more detailed list of ineligible jobs titles than is available to applicants, and have been instructed to treat as strictly ineligible any mobile usage by individuals with those titles. In some cases, this has meant reductions in funding requests. In other cases, given the SLD’s administrative rule of denying any funding request with more than 30% ineligible use, it has meant outright denial.

An inconsistent aspect of the mobile eligibility issue is that it stands in stark contrast to the FCC’s policy of technological neutrality as applied to wired and wireless LANs. Both cellular and regular telephone service (“POTS”) have been deemed basic telephone services for E-rate purposes, but no attempt is made to treat as ineligible any portion of local telephone service attributable to non-instructional staff. While it can be argued that POTS is inherently a networked service, not easily apportioned, it can likewise be argued that mobile phones are merely a functional extension of the same network. From a technical standpoint, moreover, certain mobile phone services (such as provided by Nextel) clearly provide wireless network services.

The easiest, fairest, and most consistent way to address the issues raised in this appeal would be to treat all basic telephone services — wired or wireless — as eligible. Short of that, we ask the Commission to consider the range of SLD eligibility decisions discussed below.

Specific Administrator Decisions Being Appealed:

The following five cases reflect the reduction or outright denial of funding requests made for cellular service. In all cases, the applicants had made what they considered diligent efforts to separate out usage by non-instructional staff. In all cases, SLD reviewers made their own independent, and clearly stricter, judgments of ineligibility. In all cases, we argue that SLD reliance on job titles as the sole determinant of eligibility is: (a) inappropriate; (b) at variance with the SLD’s own language (quoted above); and (c), at odds with lesser information provided to applicants. Given the subjective nature of these decisions, we argue, in the case of outright denials, that it is unfair to apply the SLD’s 30% administrative denial rule to cases in which applicants have made diligent efforts to separate out usage by non-instructional staff.

Decision 1: Garden City Union Free School District
Garden City, New York
Form 471: 263272 FRN: 680836 Not Funded

The FRN attachment for this application lists the users as the Superintendent, 5 Computer/Network Technicians, and the Directors of Facilities and of Transportation. By job title, the most recent SLD matrix lists the Superintendent as eligible and the Director of Facilities as ineligible. The district did not apply for other mobile services used primarily by non-instructional staff.

The SLD's decision in this case was that the "service/product requested is not being used in accordance with program rules." Although this is not explained, we assume that the SLD considered many of these users ineligible.

The 5 Computer/Network Technicians may have been considered by the SLD as ineligible "maintenance personnel," but such a view would reflect a lack of understanding of the role of these individuals to support the instructional, and less computer literate, staff. Teachers encountering computer problems in the midst of their lessons need immediate access to technical support. The cell phones are critical to this function. The computer technicians also provide teacher staff development support during non-class periods.

The two Directors are senior administrators. While their responsibilities include supervision of school maintenance and buses (and please note that Garden City did not apply for discounts of mobile services used by actual maintenance personnel and bus drivers), they have much broader supervisory and support roles as well.

Decision 2: Hewlett-Woodmere Union Free School District
Woodmere, New York
Form 471: 263303 FRN: 667469 Not Funded

The FRN attachment for this application lists 14 users of which 6 (the head custodians at 5 schools and the Supervisor of Maintenance) were deemed ineligible by the applicant. The remaining 8 included the Superintendent, Assist. Superintendent, Director of Technology and Computer Services Technicians (see argument above), Director and Supervisor of Facilities (senior staff positions above the ineligible maintenance supervisor), Director of Athletics and Health (a clear instructional position), and Special Assistant for Community Relations (serving as a "utility fielder" for many support functions).

The SLD's decision in this case was that 30% or more of the request was for usage by ineligible personnel (i.e., more than 2 of the remaining 8 users). We admit that the Supervisor of Facilities might be borderline under current policy, but argue that all other individuals provide either curriculum or instructional support.

Decision 3: Oceanside Union Free School District
Oceanside, New York
Form 471: 264509 FRN: 670524 Not Funded

The FRN attachment for this application lists 9 users of which 6 involved directly in either buildings/grounds maintenance or security were deemed ineligible by the applicant. The remaining three were the Superintendent, the Director of Facilities and the Supervisor of Operations. As argued above, we believe all three individuals provide either curriculum or instructional support.

We also note that this FRN was for Nextel, a wireless network service.

Decision 4: Port Washington Union Free School District
Port Washington, New York
Form 471: 263178 FRN: 683313 Reduced 40%

The FRN attachment for this application lists 6 cellular accounts for 18 users (ineligible user accounts were not included). The list includes the Superintendent and 2 Assistant Superintendents, 6 phones for the athletic department, 6 building principals, the high level administrators (for Facilities & Operations and Transportation), and the Coordinator of Medical Services. We admit that the Coordinator of Medical Services might be borderline, but argue that all other individuals provide either curriculum or instructional support.

Decision 5: Uniondale Union Free School District
Uniondale, New York
Form 471: 263017 FRN: 664346 Not Funded

The FRN attachment for this application lists 6 users (the Director of Technology and 5 Technology Technicians). As argued above, we believe the entire technology staff provides critical instructional support. We also note that this FRN was for Nextel, a wireless network service.

Appeal request:

By this appeal, we ask the Commission to clarify the eligibility of mobile services for instructional use or to "support curriculum or instruction management." Ideally, we

urge the Commission to adopt the viewpoint that — to paraphrase a recent book title — it takes an entire school to educate a child. On this basis, we recommend that the Commission treat all basic telephone services — wired or wireless — as eligible.

Short of this, we ask the Commission to reaffirm the eligibility of curriculum or instruction management personnel. Specifically, we ask the Commission to recognize the instructional support role of a school's technology staff and to recognize the common school practice of assigning broad supervisory and support responsibilities to senior administrators, regardless of formal job titles.

At a minimum, we ask the Commission to remand these five decisions to the SLD with instructions to review the "curriculum or instruction management" support functions of the individual users previously deemed ineligible solely as a result of their job titles. Given the subjective nature of these mobile service decisions, and the lack of clarification previously made available to applicants, the SLD should be instructed to waive its administrative rule of denying any funding request with more than 30% ineligible use

Respectfully submitted,

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On behalf of:

Garden City UFSD

Hewlett-Woodmere UFSD

Oceanside UFSD

Port Washington UFSD

Uniondale UFSD

Dated: August 20, 2001

Attachments: Applicable application FRN attachments